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**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Goodman

Mailed: April 17, 2006

Cancellation No. 92044270

SMART CHOICE FOOD SALES, LTD.

v.

NATURE'S WAY PRODUCTS, INC.

Before Quinn, Hohein and Rogers, Administrative Trademark Judges.

By the Board:

On March 29, 2006, we found that petitioner was entitled to summary judgment on the ground of abandonment. However, because petitioner had not submitted evidence of its standing with its motion for summary judgment, we also allowed petitioner time to file evidence in support of its standing.

On April 6, 2006, petitioner filed the following documents in support of its standing: a copy of the Office Action, issued on October 18, 2005, refusing registration of petitioner's application Serial No. 78585224 for the mark GOLD STANDARD on the basis of the mark THE GOLD STANDARD, Registration No. 1500164, the involved mark in this proceeding; and a declaration of petitioner's President who declares, among other things, that he authorized the filing of application Serial No. 78585224 "which presently stands

Cancellation No. 92044270

rejected under Section 2(d) in view of U.S. Registration No. 1,500,164."

With regard to the issue of standing, standing has been found where a plaintiff's application has been refused registration, or is believed likely to be refused registration, because of defendant's registration. See, e.g., *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); and *Hartwell Co. v. Shane*, 17 USPQ2d 1569 (TTAB 1990). Here, petitioner has made of record the office action denying registration to it based upon the existence of involved Registration No. 1500164 and has also submitted a supporting declaration. Petitioner's submission of the Office action as well as the statements in its President's declaration are sufficient to demonstrate that there is no genuine issue of material fact as to petitioner's standing; and that petitioner has standing to bring the cancellation proceedings considered herein.

In view of the evidence submitted by petitioner on the question of its standing, and in view of our prior determination that there was no genuine issue of material fact as to the abandonment of respondent's THE GOLD STANDARD mark, summary judgment is entered in favor of petitioner on its standing and on the issue of abandonment, and both

Cancellation No. 92044270

petitioner's motion for summary judgment and the petition to cancel are granted.

Judgment is entered against respondent, and Registration No. 1500164 will be cancelled in due course. See Fed. R. Civ. P. 56(c).